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COURT OF APPEALS  
DIVISION II

2022 JAN 20 PM 1:43

STATE OF WASHINGTON

BY JIT  
DEPUTY

Case Number 55531-0-II

Appeal from Clark County Case No. 20-2-00406-06

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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John Garrett Smith, Appellant

v.

Anthony Golik, Respondent

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REPLY BRIEF OF APPELLANT

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John Garrett Smith  
DOC #351176  
Cedar Creek Corrections Center  
PO Box 37  
Littlerock, WA 98556

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### Cases

'Brady v. Maryland', 373 US 83, 10 L.Ed.2d 215 (1963)  
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'Miller v. Pate', 386 US 1 (1967)  
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'State v. Smith', 196 Wn.App 238-239 (2016)  
'US v. Throckmorton', 98 US 61, 25 L.Ed.93 (1878)

### Statutes

US Constitution, Amendments 1, 4, 8, 14  
18 USCS §§ 3, 4  
RCW 9A.72.020, 40.16.010, -.020, -.030, 42.56.010, -.080, -.120, -.510

### Rules

CR 54(f)(2)  
ER 1003 (1)(2)

## 1. Introduction

This Reply Brief is timely filed by Appellant within 30 days of Response Brief filed by Respondent on 11.15.21, and received via US 'Legal' Mail by Appellant on 11.24.21.

## 2. Reply

This Reply Brief serves as formal Notice of forty-two (42) outright perjuries upon this Court by Respondent in it's 11.15.21 Response. These banal acts of deception have now regressed to bellicose aggression that is succinctly tabulated in Exhibit

D. These are recurring and serious deflections on their own in Respondent's continual efforts to cover up the felonious fabrication of a falsified Public Record.

This Court should not be lured by the Stalking Horses.

Appellant remains focused on the primal issue of this simple case precisely because Respondent utterly fails to address that issue that remains simple and very specific: 'Play The Real Voice Mail' - It's The Law.

## 3. Paramount and Simple Issue of The Case

Only after trial Court ordered Judgment and Sentence (in Clark County No. 13-1-01035-6), was Evidence 'Discovery' revealed to the Appellant. That 'Discovery' included an alleged 'copy' of a sound recording that continues to be used singularly to sustain that Judgment and Sentence per prior ruling by This Court of Appeals, 'State v. Smith', 196 Wn.App 238-239 (2016).

As swiftly as possible, Appellant made Respondent's spurious 'copy' of the recording available for forensic analysis by two (2) independent acoustic professionals. Both of those experts have testified that the Respondent's recording is fake. Both of those testimonies were provided as Exhibits in proof with this original Petition.

This discovery is proof of criminal acts under the auspices of Respondent because it is a felony to fabricate a false Public Record ( RCW 9A.72.020, 40.16.010, -.020, -.030 ).

Alone, this salient fact invokes 'BRADY' Evidence Protocol' for requisite disclosure while it simultaneously triggers both prongs of Evidence Rule 1003 demanding authenticity. Of course, the Public Records Act is another legal remedy, but when Respondent and affiliated Agencies ignore those repeated requests (as described by Exhibits A, B, and C), Mandamus does, in fact, become a valid means of relief ( 'Cheney v. USDC for D.C.', 542 US 367 (2004) and 'Nixon v. Sirica', 487 F.2d 700 (DC Cir., 1973) ).

Appellant has made these non-discretionary duties of Respondent abundantly clear throughout this entire process.

#### 4. Argument

##### I. BRADY LAW

First, this manifest revelation of fraud in evidence fabrication invokes 'BRADY' duties EVEN IF APPELLANT NEVER REQUESTED DISCLOSURE OF THE REAL EVIDENCE.

Presentation of known false evidence is incompatible with "rudimentary demands of justice". The Supreme Court explained that the same result obtains when the State, although not (perhaps) soliciting false evidence, "allows it to go uncorrected when it appears", 'Brady v. Maryland', 373 US 83, 10 L.Ed.2d 215 (1963). The Respondent knowingly presented false evidence against Appellant, as proven in Exhibits to this original Petition.

##### II. EVIDENCE RULES

Second, evidence of Respondent's use of a fraudulent copy triggers ER 1003(i) and (ii) for verification of Authenticity.

Case Law is logically cogent. 'Halsey v. Pfeiffer', 750 F.3d 273, 292-3 (3d. Cir. 2014), 'Miller v. Pate', 386 US 1 (1967), et. al. justly prohibit the use of false evidence.

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### III. PUBLIC RECORDS ACT

Third, The Public Records Act established the unequivocal 'duty' to disclose ANY public record (42.56.010, -.080, -.120, -.510). Respondent's prevailing obfuscations into ostensible confusion about what, specifically, Appellant is asking for are sophomoric. Appellant has made it precisely clear that he is requesting presentation of 'the original sound recording', NOT the physical iPHONE.

### IV. A Crime to Conceal A Crime

Finally, and most cogently, 18 USCS §§ 3, 4 prohibits Respondent's patent cover-up of the patent felony of fabricating a false Public Record ( RCW 9A.72.020, 40.16.010, -.020, -.030 ).

'Cheney v. USDC for D.C.', 542 US 367 (2004) and 'Nixon v. Sirica', 487 F.2d 700 (DC Cir., 1973) empower Mandamus as valid means of resolution here and now.

### 5. Conclusion

Respondent is obviously bent on covering it's now 8 year-old lie. Why else would it take time to craft a 26-page alibi when, IF the alleged "copy" of a recording used singularly to convict the Appellant IS legitimate, it would take just 3 minutes to terminate this cause?

The accumulative Res Judicata of well-established code, statute and case law that simply requires truth in disclosure should move this Court to see past Respondent's waste of public funds in it's perpetual diversions from the prime issue at hand that have now regressed to blatant perjury.

This Court should consider the gravity of the Respondent's tantrum of diversionary insults, but then simply look over the Stalking Horses to the White Elephant that's still standing in the center of the room: Play The Real Voice Mail because It's The Law.

Respectfully Submitted under penalty of perjury on this 10<sup>th</sup> Day of December, 2021 by:



John Garrett Smith

Appellant Pro Se

• CERTIFICATE OF SERVICE FOLLOWING •

- Exhibit ~~A~~ - Public Records Request  
Suppressed by State  
Documents Dated: 5.28.19, 6.14.19, 7.4.19
- Exhibit ~~B~~ - Public Records Request  
Suppressed by VPD  
Documents Dated: 6.14.19, 7.19.19
- Exhibit ~~C~~ - Public Records Request  
Suppressed by Respondent  
Document Dated: 12.29.19

EXHIBIT D

< Table of 42 Perjuries by Respondent in 11.15.21 BRIEF >

→ EXHIBIT D ←

< Table of 42 Perjuries by Respondent in 11.15.21 Brief >

The ongoing wordsmithing and semantics by Respondent to avoid the primal legal matter of this action have now regressed to the following specifically identified perjuries in it's 11.15.21 Response Brief:

- 1/ Page 2, 3rd paragraph ... Appellant's own pleadings to the Court DO NOT establish that 'service was never perfected' ... IN FACT, in Appellant's Opening Brief, in Timeline item (iii), Appellant states how Clark County never acknowledged his filing, NOT that he failed to serve it.
- 2/ Page 2, 3rd paragraph ... a 'courtesy copy' was NEVER provided from the Court. IN FACT, in Appellant's Opening Brief, in Timeline item (iv), he states how a private investigator 'discovered' via the internet that his Petition had, IN FACT, been given a Case Number. IN FACT, Court failed to serve Appellant.
- 3/ Page 2, 3rd paragraph ... it is false that Appellant failed to serve Respondent documents.
- 4/ Page 3, 3rd paragraph ... this is the first of multiple misrepresentations of the 9.25.20 hearing ... It is obvious by Appellant's 9.21.20 filing (Index #s 20-24) that he 'knew' about the planned hearing. What his 9.21.20 filing shows is that, without Court authorization for him to appear, APPELLANT HAD NO POSSIBLE WAY TO ATTEND while confined by DOC. IN FACT, Court's refusal to grant Appellant's request to participate by executing his proposed Order to Participate, EFFECTIVELY DENIED his 1st Amendment Right of Access to the Courts. Respondent's pinning blame on Appellant for not attending is bellicose and wrong.
- 5/ Page 3, 4th paragraph, Appellant's Opening Brief does, in fact, NOT contain ANY 'blatant misrepresentations of fact' so they cannot be 'demonstrably false'. Appellant was very effectively PREVENTED from attending the 9.25.20 ex parte hearing.
- 6/ Page 3, 4th paragraph, Appellant unequivocally did NOT make the 'deliberate decision to not include pleadings that disprove his blatantly false allegations in his Designation of Clerk's Papers - PROOF: IN FACT, he DID include the very 9.21.20 MOTION, including Proposed Order to Grant Appearance (Index #21, 25 pages, as filed on 7.6.21 by Court Clerk). Respondent's emotional outburst is

perjurious because it is patently false.

7/ Page 4, 2nd Paragraph, In light of the deceptions in items 1-6 above, Respondent's call for 'sanctions' against Appellant is bellicose and inflammatory.

8/ Page 5, 'Statement of the Case' itself deceptively omits the sole driver for this Writ ... the fact that, only post-issuance of Appellant's judgment and sentence in 2015 was 'Discovery' (including Respondent's 'copy' of the alleged voice mail) revealed to Appellant. As soon as possible, 2 independent acoustic forensic experts then established that the copy is a fake, thereby invoking ER 1003(i) and (ii) and 'BRADY' DUTIES of Respondent to disclose the Real recording. While Respondent deceitfully raves on with allegations that Appellant failed in clerical administration, Respondent himself is hiding patent criminal actions.

9/ Page 9, Footnote 3, the flippant comment about 'leave to attend not being necessary' is malicious and makes sport of the 1st Amendment because, IN FACT, without specific Court Order (as specifically requested by Appellant on 9.21.20 Index #21), DOC DOES NOT ALLOW participation in hearings by a pro-se inmate. Appellant had NO WAY to ATTEND on 9.25.20, or even had ANY WAY to find out that the 'scheduled' hearing was even happening. These are blatant violations of his 1st Amendment right to access the Courts, so Respondent's cavalier mockery and blaming is an extraordinarily 'cruel and unusual' breach of the 8th Amendment, too.

10/ Page 10, 1st Paragraph, Respondent falsely states that 'Appellant's motion was primarily focused on discrediting the authenticity of evidence admitted in his underlying criminal trial'. This is unequivocally NOT what Appellant is focused on BECAUSE, IN FACT, that 'discrediting' was ALREADY DONE by the dual forensic expert testimonies. Appellant is simply seeking lawful disclosure of REAL evidence.

11/ Page 10, 2nd Paragraph, Respondent's claim that "Appellant had every opportunity to attend" is a lie on it's face. Without the Court Order to attend that Appellant requested on 9.21.20 (Index #21), Appellant NEVER HAD A CHANCE to even know if the hearing was happening, let alone to attend it.

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12/ Page 12, 2nd Paragraph, Appellant DID, IN FACT, serve Respondent with a copy of his 7.28.21 Opening Brief, per GR 3.1.

13/ Page 12, 2nd Paragraph, Appellant NEVER used the word 'knowledge' of the 9.25.20 hearing. Of course, he 'knew' about it's schedule, as proven by the Index #21 that he DID include in his 'Clerk's Papers'. In FACT, and what really matters, is that Appellant was NOT notified that the hearing was made manifest, and he was NOT ALLOWED to Attend. Respondent's blaming Appellant for Appellant being denied his 1st Amendment Right to Attend Court is absurd and cruel.

14/ Page 13, 3rd Paragraph, Appellant's Opening Brief DOES NOT make 'several alarmingly blatant misrepresentations', and the ensuing call for 'sanctions' should be on the patently deceptive and malicious Respondent for this vitriolic lie.

15/ Page 13, 3rd Paragraph, Appellant NEVER used the word 'knowledge' of the 9.25.20 hearing. Of course, he 'knew' about it's schedule, as proven by the Index #21 that he DID include in his 'Clerk's Papers'. In FACT, and what really matters, is that Appellant was NOT notified that the hearing was made manifest, and he was NOT ALLOWED to Attend. Respondent's blaming Appellant for Appellant being denied his 1st Amendment Right to Attend Court is mean.

6/ Page 14, 1st and 2nd Paragraphs, Appellant's Request to participate in the 9.25.20 hearing (Index #21) was never granted, so he was NOT 'notified' about the manifestation of the event, nor was he "allowed to be present". Respondent's semantics are making sport of Appellant's restraint. Respondent's calling the denial of Appellant's 1st Amendment Right the Appellant's "intentional falsity" is libelous, deceptive and belligerent.

17/ Page 15, 2nd Paragraph, In the epitome of perjury, Respondent claims that "Appellant made the deliberate choice not to include any of these {9.25.20 hearing} documents in his Designation of Clerk's Papers", when, IN FACT, APPELLANT DID INCLUDE HIS 9.21.20 MOTION TO ATTEND THE HEARING ... Now, BECAUSE Appellant's Request was ignored, the Appellant is lying? This is Kafka-esque insanity. Respondent is deflecting from the weightiest matters of Law (criminal fabrication of evidence) by falsely attacking simple facts.

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18/ Page 15, 3rd Paragraph, Indeed, Appellant NEVER DID receive the 10.27.20 notice. In Fact, this is the first he has ever heard of JAVS or seen the transcript of the 9.25.20 hearing that he was NOT ALLOWED to attend.

19/ Page 16, 2nd Paragraph, Appellant did not 'choose not to request' a transcript ... In Fact, HE was never told it even existed (see Index #26). Respondent is deceptively speculating as a diversion from criminal malfeasance in his cover for evidence fabrication.

20/ Page 16, 3rd Paragraph, Appellant has NEVER 'chosen to misrepresent' any facts. Instead, Respondent's attack flies in the face of the FACT in Index #21 - Appellant's request for approval to attend that was ignored, EFFECTIVELY denying him 1st Amendment Access to 'material awareness' of the hearing. THIS is what REALLY happened. THIS is what REALLY matters.

21/ Page 16, 4th Paragraph, Respondent lies about Appellant's inclusions in Clerk's Papers. PROOF: Index #21, including Appellant's Request to Attend that was ignored, IS in Appellant's Designation. Respondent is emotionally making totally false claims by 'wordsmithing' in denial of real events.

22/ Page 16, 4th (A) Paragraph, Respondent Calling for Appellant to be 'sanctioned' is a hypocritical and bellicose diversion.

23/ Page 16, FOOTNOTE 4, Without approval of Appellant's Request to Attend the hearing, APPELLANT HAD NO POSSIBLE WAY TO ATTEND. The claim that 'every opportunity' was made to allow Appellant to attend is dramatic fiction.

24/ Page 17, 2nd Paragraph, The 11.2.20 Motion was NEVER served to the Appellant. Respondent lies when it claims Appellant 'made the intentional choice not to include' specific pleadings with his Designation of Clerk's Papers. IN FACT, as listed in Timeline item (viii) in his Opening Brief, Appellant was never provided Index #37 or #38, so how could he have 'chosen' to not include things he knew nothing about?

25/ Page 18, both Paragraphs, Appellant was denied access to attend on 9.25.20, a

breach of his 1st Amendment Right that he duly requested in Index #21. This is the epitome of prejudice - Respondent maliciously dodges and 'misstates' Paramount Law.

26/ Page 19, 1st Paragraph, The moving party (Appellant) does NOT bear the burden of establishing 'duty of disclosure' - 'Brady v. Maryland', 373 US 83, 10 L.Ed.2d 215 (1963), 'Cheney v. USDC for D.C.', 542 US 367 (2004) 'Halsey v. Pfeiffer', 750 F.3d 273, 292-3 (3d. Cir. 2014), 'Miller v. Pate', 386 US 1 (1967), and 'Nixon v. Sirica', 487 F.2d 700 (DC Cir., 1973) pin that DUTY DIRECTLY ON RESPONDENT.

Especially in light of THIS COURT'S Res Judicata over THIS SUBJECT MATTER ('State v. Smith', 196 Wn.App 238-239 (2016)), the Appellant is by all means "beneficially interested" - his very Liberty remains at stake.

Especially when the RCW 42.56.510 "positive duty to disclose" remains rampantly disregarded (see Exhibits A, B, C), Respondent's grasp of untenably fake evidence is criminal.

27/ Page 20, 2nd Paragraph , the recurring denial of all possible remedies (See Exhibits A, B, C and the Original Petition) establishes that there is, in Fact, NO REMEDY, 'plain, speedy, or adequate', aside from this urgent Mandamus.

28/ Page 20, 3rd Paragraph, What Appellant is 'precisely' seeking does NOT 'REMAIN CONVOLUTED' - this is deceptive wordplay by a perjuring Respondent. It has been relentlessly made clear that the Appellant simply and plainly seeks disclosure of the "original audio recording", NOT the iPHONE's return or a 'copy' of the recording already proved to be fake.

THIS IS A SIMPLE REQUEST. Respondent's quest to make it complex is deceptive and diversionary. It is tantamount to perjury.

This Request is for Mandatory Public Disclosure of the ORIGINAL 3-minute duration Voice Mail recording saved/stored on Item # 1455-002 (iPHONE # 503.203.2695) at 11:10 pm on 6.2.13. The expressed and explicit Purpose of this Request is to Disclose in a Public Forum the acoustic contents of this Voice Mail audio recording AS IT IS EXACTLY STORED ON THE DEVICE.

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This Request is NOT for the return of the iPHONE, Item # 1455-002 in VPD Case # 13-8172.

This Request is NOT for a "copy" of the recording stored in Item # 1455-002 in VPD Case # 13-8172 at 11:10 pm on 6.2.13, but for disclosure of the ORIGINAL sound recording as it is stored on the iPHONE, as Guaranteed by RCW 42.56.

Fulfillment of this Formal Request is Mandatory in accordance with Chapter 42.56  
- The Public Records Act - of Revised Codes of Washington:

<RCW 42.56.080>

"Public Records shall be available for inspection and copying, and agencies ('State', 'Local', etc.) shall, upon Request, make them Promptly available to Any person. Agency facilities shall be made available to Any person for the copying of public records."

<RCW 42.56.120>

"No fee shall be charged."

<RCW 42.56.510>

"It is the Positive Duty of Any Agency to disclose."

<RCW 42.56.010 (3)(4)>

""Public Records" include any 'writing', and any 'writing' means, including but not limited to, "sounds" and "sound recordings" ... including data compilations from which information can be obtained or translated."

29/ Page 21, 2nd Paragraph, Positive Duty of Respondent is redundantly set by "BRADY" law and RCW 42.56.510 and ER 1003(i)(ii). Respondent's skating away from ubiquitous law is deceptive.

30/ Page 21 2nd Paragraph, Indeed, compliance with this simple Compulsory Disclosure IS INHERENTLY "ministerial, that is, mandatory and imperative and defined with precision and certainty".

31/ Page 21, 2nd Paragraph, Indeed, there is NOTHING DISCRETIONARY about

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"BRADY", The PRA, FOIA, etc., et. al.

32/ Page 21, 2nd Paragraph, Indeed, 'BRADY' itself "compels the performance of an act which the law especially enjoins as a duty resulting from office".

Respondent MUST disclose evidence, ESPECIALLY because it is exculpatory, and ESPECIALLY because he is a State Official.

33/ Page 22, 2nd Paragraph, The claim that "Appellant provides no authority" for Mandamus is a bold lie: 'Cheney v. USDC for D.C.', 542 US 367 (2004) and 'Nixon v. Sirica', 487 F.2d 700 (DC Cir., 1973) are inherently Poignant, Cogent and Relevant.

34/ Page 22, 3rd Paragraph, IF 'common law provided access to court case files' (AND IT DOES), THEN Respondent is obligated to Disclose them, NOT conceal them. It is perjury to twist law in order to break it.

35/ Page 23, 1st Paragraph, This simple, identifiable audio public record is NOT an issue of 'protecting privacy and governmental interests' but for protecting Respondent's protection of his own use of fraud to usurp the justice system.

36/ Page 23, 2nd Paragraph, 'BRADY' clearly and cogently establishes Respondent's 'ministerial duty' to transparency.

37/ Page 23, 3rd Paragraph, Ever since forensic analyses triggered both prongs of ER 1003 yet Respondent refuses to comply, any notion of 'Adequate Remedy at Law' is obsolete. Respondent is denying all Remedies at Law. Mandamus IS invoked.

38/ Page 24, 1st Paragraph, Time-Barring is irrelevant here. None of 'Brady', ER 1003, or the PRA offer time bar shelter for Respondent to hide criminal evidence or it's criminal fabrication.

39/ Page 24, 2nd Paragraph, This is linguistic tongue-twisting. So, because the Public Records Act offers remedy, and the Respondent refuses to comply (See Exhibits A, B, C), Court especially has the impetus to invoke Mandamus to demand compliance. The Respondent's denial of his Duty DOES NOT create

permanent right to evade that Duty.

40/ Page 24, 3rd Paragraph, Defendant's claim of it's not being served documents it has identified and addressed is moot: not only HAS Appellant served Defendant repeatedly via hard-copy courier and GR 3.1 delivery, but also, 18 USC §§ 3 and 4 - Laws against Misprision and Accomplicement - carry no exemptions for means of notice. Again, the 4th, 8th and 14th Amendments cannot tolerate the major issue of Police Fabricated Evidence being ignored behind the smokescreen of Defendant's deceptive diversion and falsified semantics.

Furthermore, none of the primal Laws cited since the time even before the Petition for Writ of Mandamus hold any sort of notice service barrier whatsoever - including, but not limited to, 'Brady v. Maryland' (1963), ER 1003, and The Public Records Act (RCW 42.56). Indeed, these Laws actually establish disclosure as a "positive duty", rather than provide gateways out of compulsory compliance

41/ Page 24, 3rd Paragraph, Respondent deceptively claims a 'lack of any recognized cause of action', BUT "Fraud Vitiates Everything", 'US v. Throckmorton', 98 US 61, 25 L.Ed.93 (1878).

42/ Page 25, 2nd Paragraph, Respondent resorts to the emotionally-charged accusation that "Appellant's alarmingly blatant misrepresentations" deserve sanctions. In Fact, Respondent is lying to deflect and divert from his own criminal malfeasance regarding his fostering and harboring of criminally fraudulent evidence.

Claude Monet wrote, "The subject of all work is light". Here, one party, the Appellant, calls for that light in the form of simple, easy, quick and efficient disclosure. The other, the Respondent, persists in wasting Public time and money by hiding in the darkness. This is nowhere more evident than in his 11.15.21 perjurious tirade.

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# Certificate of Service

Pursuant to GR 3.1, I do hereby certify  
service of the foregoing to the following  
via US Mail in Case No. 55531-0-II:

- Curtis Burns  
Counsel for Respondent  
Deputy Prosecuting Attorney  
Clark County  
Box 5000  
Vancouver, WA 98666

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COURT OF APPEALS  
DIVISION II  
2022 JAN 20 PM 1:43  
STATE OF WASHINGTON  
BY DEPUTY

- Court of Appeals  
Division II  
909 A St., Ste. 200  
Tacoma, WA 98402

  
John Garrett Smith

DATES: 12.10.21 & 1.14.22